MISCELLANY.

Explaining to Your Client Why You Lost His Case.—In the "Reminiscences of Gen. Basil W. Duke," the following is found.

"Some thirty or more years ago, Byron Bacon, a member of the Louisville bar, at a meeting of the Kentucky Bar Association responded to the toast: 'How to Explain to Your Client Why You Lost His Case.'"

Mr. Bacon's response was as follows:

"I deprecate any thought that I respond because, from a more extended experience than my legal brethren, I bring to the solution of this question the exhaustive learning and skill of the specialist. The characteristic modesty of our profession forbids that I should arrogate to myself to instruct the eminent lawyers around me, wherein they doubtless have attained that perfection which only long practice can give.

"I assume, therefore, that the subject was proposed for the edification of novitiates—those 'young gentlemen' to whom Blackstone so often and so feelingly alludes, who, after a long and laborious course of study, have been found, upon an examination by the sages of the law, not to have fought a duel with deadly weapons since the adoption of the present Constitution,' and have been admitted to our ranks.

"To them, then, I shall offer briefly, some suggestions upon this point, hoping that they may not find them of practical value upon the termination of their first case. The question as framed, is not unlike that with which Charles II. long puzzled the Royal Society. He demanded the cause of certain phenomena, the existence of which he falsely assumed. The answer was simply the denial of the existence of the phenomena. What lawyer ever attempted to explain the failure of a case upon the hypothesis that he had lost it? That a lawyer cannot lose a case is as well established a maxim as that the King can do no wrong, or, that a tenant cannot deny his landlord's title. Eliminate this error, and our question is of easy solution.

"Coke tells us that law is the 'perfection of human reason'; Burke, that it is 'the pride of the human intellect; the collected reason of ages, combining the principles of eternal justice with the infinite variety of human concerns; the most excellent, yea, the exactest of the sciences'; and the eloquent Hooker, that 'her seat is the bosom of God, her voice the harmony of the spheres; all things in Heaven and on earth do her homage—the least as feeling her care, the greatest as not exempt from her power.' But we know that, if it be the purest of reason, the exactest of the sciences, its administration is not always entrusted to the severest of logicians or the exactest of scientists.

"If, oblivious of this, you shall have assured your client of suc-

cess in the simplest case, the hour of his disappointment will be that of your tribulation, and professional experience can extend to you no solace or aid.

"But your client's cause has resulted unfavorably. You, of course, are never to blame; the fault is that of the judge, the jury, or your client himself, and it may be of all three. It becomes your duty to divert the tide of his wrath into those channels where it can do the least possible harm. If he be a crank and shoots the judge or cripples a juror, they fall as blessed martyrs and their places and their mantles are easily filled; but not so readily your place or your mantle. As one of America's sweetest poets, Mr. George M. Davie has expressed it in a touching tribute to our professional and social worth, unequalled for delicacy of sentiment, boldness of imagery, and beauty of diction, in the whole range of English poetry:

> Judges and juries may flourish or may fade,
> A vote can make them as a vote has made;
> But the bold barrister, a country's pride,
> When once destroyed, can never be supplied.

"The selection, then, of a target for your client (I use the word 'target' metaphorically) must rest upon the peculiar facts and circumstances of the case and the 'sound discretion,' as the venerated Story has it, of the counsel. But avoid, if possible, imputing the blame to your client, for, although this has been attended with very happy results, yet his mood, at such times, is apt to be homicidal, and, moreover, you should bear in mind that there your aim is to conciliate.

"'Who wrote that note?' demanded the Indiana lawyer who, under the old system of procedure, had declared in covenant as on a writing obligatory, and gone out of court on a variance.

"'I got Squire Brown to write it,' answered his sorely perplexed and discomfited client.

"'I thought so,' sneered the learned counsel. 'Didn't you know that no d——m magistrate could write a promissory note that would fit a declaration?'

"First, as to the jury. Upon this head I need not enlarge, only remind you that you are not held by the profession as committed or estopped by an eulogium, however glowing, which you may have pronounced during the trial on their intelligence and integrity. It is only in the capacity of a scapegoat that the American juror attains the full measure of his utility, and as such he will ever be regarded by our profession with gratitude not unmingled with affection.

"But it is to the judge that we turn in this extremity, with unwavering confidence. The serenity and grandmotherly benignity en-

throned upon his visage is to the layman that placidity of surface which indicates fathomless depths of legal lore; to the lawyer, it bespeaks the phlegmatic temperament of one whose mission is to bear unmurmuringly the burdens of others.

"It comes upon you like a revelation that your weeks of study, your elaborate preparation, your voluminous brief, are all for naught; that the impetuous torrent of your eloquence has dashed itself against his skull, only to envelope it in fog and mist, and 'more in sorrow than in anger' you confess that the presumption that every man knows the law cannot be indulged in his favor. Even your luminous exposition has failed to enlighten him. You need not spare him. He thrives upon abuse. Year in and year out, he bears the anathemas of disappointed lawyers and litigants with the stolid indifference of Sancho Panza's ass in the valley of the pack-stones, or beneath the missiles of the galley-slaves, and society comes finally to regard him pretty much as Sancho did his ass. It berates him, overtasks him, half starves him, and loves him.

"But seriously considered, our question is only a long-standing and harmless jest of the bar, meaningless in actual practice. The lawyer is untiring in his client's behalf and the client knows, be the result what it may, that he has had the full measure of his lawyer's industry, zeal and ability and requires no explanation. Lord Erskine said that in his maiden speech he felt his children tugging at his gown and heard them cry 'now, father, is the time for bread.' The british bar applauded the sentiment. The American lawyer, throughout the case, feels his client tugging at his gown and, if unsuccessful, is sustained by the consciousness that he has done his whole duty as God has given him to see and perform it; and, should he want further consolation, he can open that oldest of all the books of the law and there read these words which may soothe his wounded spirit and, perhaps, best answer the question of to-night:

"'I returned and saw under the sun that the race is not to the swift, nor the battle to the strong; neither yet bread to the wise, nor yet riches to men of understanding, nor yet favor to men of skill, but time and chance happeneth to them all.'"—Kentucky Law Journal.

The Judicial Point of View.—"A just cause does not invite to its assistance improper methods, and an honest mind does not consent to their employment." Woolsey *v.* Haynes, 165 Fed. Rep. 391, 398, per Philips, Dist. J.

Where a brief "may be said to be largely an indiscriminate hotch-pot discussion and dissertation upon law, mythology, Shakespeare, and the Bible" its general style "is not one to be followed by attor-

neys conducting litigation before this court." Duncan *v.* Times-Mirror Co. (Cal. 1898), 52 Pac. Rep. 651, 652, per Curiam.

"Courts have no right to marry people who never wished nor intended to be married." Prince *v.* Edwards (Ala. 1912), 57 So. Rep. 714, 715, per Somerville, J.

"Annastasia Hackett had to be born before she could be baptized." Collins *v.* German-American Mut. L. Assoc., 112 Mo. A. 209, 222, per Bland, P. J.

"Oysters have not the power of locomotion." Fleet *v.* Hegeman, 14 Wend. (N. Y.), 42, 45 per Nelson, J.

"The height of men is not eight feet." Hoagland *v.* Canfield, 160 Fed. Rep. 146, 160, per Ray, Dist. J.

"'Your money,' not 'your life,' is the demand made by the bankrupt act." Holland *v.* Heyman, 60 Ga. 174, 180, per Bleckley, J.

"There is nothing about the practice of the profession of the law which makes the business dangerous to the public. It does not threaten the public health or safety, nor is it demoralizing to the public." City of Sonora *v.* Curtin, 137 Cal. 583, 585-586, per Cooper, C.

"A struggling physician or lawyer tendered a fee needs no contract to induce him to accept it." Barker *v.* Western Union Tel. Co. (Wis. 1908), 114 N. W. Rep. 439, 441, per Dodge, J.

"No more in twentieth-century Canada than in mediæval Venice, may a Judge 'to do a great right, do a little wrong.'" Rex. *v.* Michigan Central R. Co., 10 Ont. Wkly. Rep. 660, 670, per Riddell, J.

"We should be slow to believe that human ingenuity has been exhausted in the concoction of an unconstitutional enactment." State *v.* Sprigfield Township, 6 Ind. 83, 88, per Stuart, J.

"We must confess to want of respect for precedents which were found in the rubbish of Noah's Ark, and which have outlived their usefulness, if they ever had any." Caples *v.* State (Okla. 1909), 104 Pac. Rep. 493, 500, per Furman, P. J.

"A man can recollect as well in the Italian language as he can in English." State *v.* O'Brien, 3 Ida. 374, 380, per Morgan, J.

"I think a man must be a driveling idiot who does not know what beer is." Griffith *v.* State, 58 Wis. 39, 41, per Orton, J.

"I do not think it necessary to prove that a man was actually found in a snow bank, an ice chest, or a place where the temperature was below freezing in order to justify a jury in finding he had been in a place where things freeze when he is found with frozen feet and hands." Hoagland *v.* Canfield, 160 Fed. Rep. 146, 160, per Ray, Dist. J.

"A person is not bound to stand quietly and be bitten by a dog, nor to give him what might be called a fair fight among men." Perry *v.* Phipps, 32 N. C. 259, 262, per Ruffin, C. J.—Reprinted from 11 Bench and Bar.

An Astonishing Plea.—When John H. Atwood, the Kansas City lawyer, was practicing in Leavenworth, he once violated all the traditions of the legal profession by denouncing his client in court as an "old devil" unworthy of winning the suit, and not only won his client's case, but escaped any censure by the bar association for doing it, says the Kansas City (Mo.) Star. It was a long time before Leavenworth ceased to smile over his remarkable defense of his client, and the story is still good for a laugh whenever lawyers gather to swap yarns.

It was back in 1898 that the case came up in the district court at Leavenworth before Judge Meyer. Col. D. R. Anthony, the fighting editor of the Leavenworth Times, was Atwood's client. Colonel Anthony was being sued by John C. Douglass for possession of a valuable lot on which Colonel Anthony had paid taxes regularly for thirty years. It appeared that previous to that time Douglass had obtained a tax title to the property.

Now, Judge Douglass, as he was known, and Colonel Anthony were undoubtedly the most hated men in Leavenworth, with the difference that the editor also had a lot of warm friends. Those who didn't like Judge Douglass called him a "tax title shark," which sufficiently explains the regard in which he was held in the community. Buying tax titles and then exacting heavy payments, or buying in the property for little or nothing, was his sole business. Naturally, a man in that business in time gets somewhat at outs with the sentiments of his neighbors and is called harsh names. It was the same with Colonel Anthony. The names Judge Douglass was called would have sounded like high praise compared to what Colonel Anthony's enemies called him. The Colonel himself was somewhat adept in that line, his mildest epithet for those he didn't like being "skunk." What he called his real enemies had better be imagined.

When the Colonel didn't like a man he hated him with his whole mind, his whole heart and his whole soul. He believed in personal journalism, and when he turned loose the columns of the Leavenworth Times on an enemy the town fairly sizzled. He never used a pillow, the meatax being a weapon he liked better.

When John Atwood came to town and hung out a shingle as a lawyer and began practicing Democratic politics until some law business came along, it was inevitable that, holding political views quite abhorrent to Colonel Anthony's dyed-in-the-wool and yard-wide Republicanism, he should come into conflict with the editor. It wasn't long before Atwood became known pretty well through Kansas as a "silver tongued" orator. He had a gift of language that could be flowery, satirical or denunciatory. Having come, as per schedule, into conflict with Colonel Anthony, he had frequent occasion and opportunity of various political campaigns to "burn up" the Colonel, the Colonel having been doing the same for Mr. Atwood, and doing

it plentifully. He let the people of Leavenworth know that Mr. Atwood was not only a sad fizzle as a lawyer, but was also a mental, moral and physical bankrupt, and a total human loss, with no insurance. The Colonel had somewhat the better of it, speaking as he did, to the whole town, while the best Atwood could do was to get a crowd of maybe several hundred at a political meeting to tell them that what the town sadly needed was a large funeral, starting from a certain number on the North Esplanade and winding up with the usual ceremonies and a pillow of flowers with "30" on it at Mount Muncie Cemetery.

Miss Opportunity at the Door.—As another famous Kansas lawyer has written, opportunity knocks once at every man's door, and sure enough she came around and pounded at the entrance of John Atwood's private office. Originally Colonel Anthony had retained Lucien Baker to defend his side of the Douglass suit. Baker and Atwood were law partners in the firm of Baker, Hook & Atwood, of which Judge William C. Hook, now of the United States Circuit Court, was a member. The three were the "big" lawers of Leavenworth. It happened that Baker was elected United States senator before the Douglass-Anthony suit could come to trial. With Baker in Washington, Hook refusing for personal reasons to handle the case, and Douglass crowding him up in a corner Colonel Anthony was faced by a combination of circumstances, too long to detail here, that prevented him from obtaining the services of any other lawyer except Atwood he thought could win the case.

There was only one thing to do: swallow his pride and employ Atwood. It was a bitter pill, and being so he probably wouldn't have swallowed it had he known that the dose was to be repeated. Finally the case was called. Judge Douglass, acting as his own attorney, and Atwood, with Anthony sitting at his side, fought the case through the court. Judge Douglass made his argument first and then came Atwood's long-awaited chance and sweet revenge. Rising slowly to his feet, he turned to his client and bestowed on him the same fond glance that the cat bestows upon the canary cornered in its cage, and then spoke thus:

Revenge Is Sweet.—"May it please the court: I congratulate myself upon the judicial frame of mind in which I am enabed to approach a consideration of this case. For my perfected appreciation of the many virtues that Judge Douglass possesses and Colonel Anthony's failure to appreciate any of mine leaves me in a state delightfully impartial. Ordinarily, a lawyer's zeal for his client's cause outruns his judgment, but when that client has knocked out the bung from the hogshead of his wrath and deluged him with its contents until he wades up to his middle in troubled waters, a situation is presented that tends to neutralize the lawyer's zeal until it is reduced

to a judicial calmness that is without bias; and I am able to undertake a discussion or this case without prejudice, passion or any feeling.

"The one thing that is wrong about this case is that your honor cannot find against both parties to this suit. From the standpoint of personal merit, neither of them ought to win. Neither of them came into court with clean hands and I have doubts about their feet. But Anthony has paid the taxes for many years on the property, and in so doing has contributed to the revenue of the state and county. This is playing the part of the good citizen, a part that is new to him and sets awkwardly upon him, and one that startles the community with its novelty. But since he is playing this part he ought to be encouraged in it by being permitted to win this suit. When you find one doing right for the first time in his life, the thought of discouraging him revolts the judicial conscience.

"If it is said that Anthony stole horses in Missouri I reply that Douglass has stolen homesteads in Kansas. If it is said that Anthony has been a detriment to the community, I reply that Douglass has never paid a debt he owed in the community. If it is said that Anthony has been sued often, I reply that Douglass has sued others twice as often.

"I will admit, your honor, that it is a choice of evils; one of the evils has a hooked nose and the other has a peg leg, but the hooked nose pays his taxes and the peg leg doesn't and that is where my side has the best of it. If you feel inclined to decide this case in favor of my opponent because of the delightful sentiments that cluster around his name, and through your mind should float the beautiful strain of 'Douglass, Douglass, Tender and True,' I ask you to remember that my client claims a saint among his ancestors. I will admit that the claim never has been allowed, but we make it all the same.

"Your honor may think they are two old devils together, but I submit we are not responsible for the age of Judge Douglass' iniquities. To be sure, the great age of my client is an evidence that they whom the gods love die young, but that does not alter the fact that he, and he alone, of these men, has paid the taxes.

"So I ask your honor to overlook the fact that my client has usually been wrong, and remember that now for once in his life he is right. Let his wickedness hide itself in a measure behind the wickedness of Douglass. I can see that your honor is itching to hit them both, and ordinarily you could not hit them a lick amiss, but I pray your honor to remember that you can't beat them both, much as they deserve it, and since you must give the case to one of them, I ask your honor to shut your eyes and give it to Anthony."

Not until Mr. Atwood had begun to speak was there the slightest

intimation from him what he was to say. Before he was half through every official and clerk in the courthouse had hurried to the courtroom, and the audience declared that the expression of bewilderment on the face of Colonel Anthony was exceeded in intensity only by the seraphic smile of self-satisfaction upon the face of Mr. Atwood.

Before the lawyer was half through Judge Meyer scarcely could control himself, and the audience was laughing outright. And it is even recalled that Colonel Anthony smiled when the court gave him the decision.—Law Notes.

IN VACATION.

A Thriving Law Office.—This little example of Irish wit was related at a recent dinner of the Wheel Club:

A newly-landed son of Erin was gaping along a New York street when he chanced to turn into the office of a lawyer, thinking it was a store. He was considerably impressed with the fine furnishings, and approaching the only occupant of the room, a man busy at a desk, asked:

"Could you tell me what you sell here in this fine place?"

"Certainly," was the retort, uttered in rather an impatient tone. "We sell blockheads."

The Irishman looked around and nodded in understanding.

"Sure and you must have a fine trade, I'm thinking," he commented. "You have but one lift."

An Explanation of the Difference.—Recently the St. Paul Baptist Church, of Brookhaven, Mississippi, property of a colored congregation, was destroyed by fire. The tracks of the Illinois Central Railroad Company were directly in front of the church building, which was on the west side of the track, and almost directly in front of the church, on the opposite side of the track, stood a sawmill plant.

Upon the day the church building was burned, sparks were emitted from the smokestacks of a passing locomotive, and from the smokestacks of the sawmill.

The St. Paul Baptist Church sued the railroad company, alleging that its church building was destroyed by sparks from the railroad company's locomotives. The railroad company plead that the church building was destroyed by sparks from the smokestacks of the lumber company, or from some other cause.

The plaintiff opened its case and introduced as its first witness